

Preliminary Approval of Class Action Settlement
Department SSC-9
Hon. Elaine Lu

FILED
Superior Court of California
County of Los Angeles

JAN 06 2025

David W. Slayton, Executive Officer/Clerk of Court

By: D. Keith, Deputy

Bertha Barrera v. Pediatric and Family Medical Center
Case No.: 22STCV36444 [related with: 23STCV04246]

**FIRST AMENDED FINAL RULING ON THE PARTIES' MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT
(FOLLOWING DECEMBER 10, 2024 NON-APPEARANCE CASE REVIEW)**

The Parties' Motion for Preliminary Approval of Class Action Settlement is GRANTED as the settlement is fair, adequate, and reasonable.

The essential terms of the Settlement Agreement are:

- A. The Gross Settlement Amount ("GSA") is **\$1,500,000**, non-reversionary. (¶3.1)
- B. The Net Settlement Amount ("Net") is the GSA minus the following:
 - 1. Up to **\$500,000** (33 1/3%) for attorney fees (¶3.2.2);
 - 2. Up to **\$14,000** for litigation costs (*Ibid.*);
 - 3. Up to **\$9,000** for a Service Payment to the Named Plaintiff (¶3.2.1);
 - 4. Up to **\$16,637.75** for settlement administration costs (¶3.2.3); and
 - 5. Payment of **\$110,000** PAGA penalty (75% or \$82,500 to the LWDA; and 25% or \$27,500 to Aggrieved Employees). (¶3.2.5)
- C. Employer's share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the GSA by Defendant.
- D. Plaintiffs shall release Defendants from claims described herein.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by **July 29, 2025**. Plaintiff must call the Court PRIOR to filing and serving to obtain a hearing date and briefing schedule.

The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged single document that constitutes a [Proposed] Order and Judgment containing among

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other things, the class definition, full release language, and names of the any class members who opted out.

Non-Appearence Case Review is set for **August 5, 2025, 8:30 a.m.**, Department 9.

BACKGROUND

Plaintiff Bertha Barrera sues her former employer, Defendant Pediatric and Family Medical Center (d/b/a Eisner Health), for alleged wage and hour violations. Plaintiff seeks to represent a class of Defendant's current and former non-exempt employees.

On November 17, 2022, Plaintiff commenced this action by filing a Complaint alleging causes of action against Defendant for: (1) Failure to Pay Overtime Wages for Daily Overtime Worked in Violation of Labor Code 510 and 1194; (2) Failure to Authorize or Permit Meal Periods in Violation of Labor Code Sections 512 and 226.7; (3) Failure to Authorize or Permit Rest Periods in Violation of Labor Code Section 226.7; (4) Failure to Timely Pay Earned Wages in Violation of Labor Code 204; (5) Failure to Provide Complete and Accurate Wage Statements in Violation of 226; (6) Failure to Timely Pay All Earned Wages and Final Paychecks Due at Time of Separation of Employment in Violation of Labor Code Sections 201, 202, and 203; and (7) Unfair Business Practices, in Violation of Business and Professions Code Sections 17200, et seq.

On February 27, 2023, Plaintiff filed a separate complaint against Defendant seeking civil penalties pursuant to the Private Attorneys General Act (PAGA) (Case No. 23STCV04246).

On July 24, 2023, the parties mediated before David Phillips, which ultimately resulted in settlement following continued negotiations with the involvement of the mediator. The parties accepted the mediator's proposal on October 12, 2023. The terms of settlement were finalized in the long-form *Joint Stipulation of Class Action and PAGA Settlement and Release* ("Settlement Agreement"), a copy of which is attached to the Declaration of Eve Howe ("Howe Decl.") as Exhibit 1.

Pursuant to the terms of settlement, on April 12, 2024, Plaintiff filed a First Amended Complaint in order to add Plaintiff's PAGA and minimum wage claims to the action. Plaintiff's PAGA action was dismissed on April 17, 2024.

Now before the Court is the Motion for Preliminary Approval of the Settlement, which Plaintiff filed on June 4, 2024. On September 24, 2024, the Court conditionally granted Plaintiff's Motion for Preliminary Approval of the Settlement and requested supplemental evidence. On October 25, 2024, Plaintiff filed supplemental briefing.

SETTLEMENT CLASS DEFINITION

- “Class” means all current and former non-exempt, hourly employees of Defendant who worked for Defendant at any time during the Class Period, and who have not previously released all known and unknown claims against Defendant. (¶1.5)
- “Class Period” means the period from November 17, 2018, through December 31, 2023. (¶1.12)
- “Aggrieved Employee” means all current and former non-exempt, hourly employees of Defendant who worked for Defendant at any time during the PAGA Period. (¶1.4)
- “PAGA Period” means the period from November 17, 2021, through December 31, 2023. (¶1.31)
- “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. (¶1.35)

TERMS OF SETTLEMENT AGREEMENT

The essential terms are as follows:

- E. The Gross Settlement Amount (“GSA”) is **\$1,500,000**, non-reversionary. (¶3.1)
1. **Escalator Clause:** Based on its records, Defendant estimated that, as of October 15, 2023 (1) there were 64,416 Total Workweeks worked in the Class Period. If the number of workweeks worked by the Settlement Class during the Class Period is more than 10% greater than this figure by December 31, 2023 (i.e., if there are over 70,858 or more workweeks worked by the settlement Class Members during the Class Period), Defendant agrees, to either (a) increase the Gross Settlement Amount on a proportional basis (i.e., if there was 10% increase in the number workweeks during the Class Period, above 70,858 workweeks, then Defendant would agree to increase the Gross Settlement Amount by 10%), or (b) cap the class period on the date that the 10% threshold is exceeded (i.e. the end date of the Class Period would be the date prior to October 15, 2023 on which the total workweeks worked by the Class Members is closest to but does not exceed 70,858). If Defendant selects option (a), Defendant agrees to deposit any increase to the Gross Settlement Amount owed pursuant to this term by the date on which the Gross Settlement Amount payment is due. If the number of workweeks worked by the Settlement Class during the Class Period is more than 70,858, the Class Administrator shall notify Defendant, and Defendant shall have ten calendar days to select option (a) or (b) in this Paragraph. (¶8) In granting conditional approval of the settlement on September 24, 2024, the Court required that the parties file supplemental papers indicating whether the escalator has been triggered based on the number of work weeks, and if so, whether Defendant has opted (1) for the Gross Settlement Amount to increase proportionally; or (2) to shorten the Class Period. The supplemental declaration of Eve Howe states that “Counsel for Defendant has informed Plaintiff that the

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number of workweeks through the end of the Class Period (December 31, 2023) is 69,555,” and “[t]hus, the escalator clause will not be triggered.” (10/25/24 Howe Decl. ¶ 4). Based on this representation, the Court will presume that: (a) the parties have definitively resolved the class period, (b) the class period will not be shortened, and (c) the notice to class members need not be revised to reflect any shortening of the class period. Accordingly, the Court finds that the parties have adequately addressed this contingency.

- F. The Net Settlement Amount (“Net”) (**\$850,362.25**) is the GSA minus the following:
1. Up to **\$500,000** (33 1/3%) for attorney fees (¶3.2.2);
 2. Up to **\$14,000** for litigation costs (*ibid.*);
 3. Up to **\$9,000** for a Service Payment to the Named Plaintiff (¶3.2.1);
 4. Up to **\$16,637.75** for settlement administration costs (¶3.2.3); and
 5. Payment of **\$110,000** PAGA penalty (75% or \$82,500 to the LWDA; and 25% or \$27,500 to Aggrieved Employees). (¶3.2.5)
- Defendant will separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. (¶3.1)
 - There is no claim form requirement. (¶3.1)
 - Individual Settlement Payment Calculation:
 - Class Payments: Each Participating Class Member will receive an Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member’s Workweeks. (¶3.2.4) Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis. (¶3.2.4.2)
 - PAGA Payments: The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Settlement Amount by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Period Pay Periods. (¶3.2.5.1)
 - Tax Allocation: Each Participating Class Member’s Individual Class Payments will be allocated as follows: 20% as wages, 80% as interest, penalties and expense reimbursement. (¶3.2.4.1) The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. (¶3.2.5.2)
 - Response Deadline: “Response Deadline” means sixty (60) calendar days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the

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expiration of the Response Deadline. (¶1.43) The same deadlines apply to the submission of workweek disputes. (¶7.6)

- If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. (¶9)
- **Funding of Settlement:** Defendant agrees to deposit the Gross Settlement Amount with a mutually-selected third party administrator within 30 days of the Court entering the Final Approval Order/Judgment. ("Final Payment"). (¶4.3) Section 3.1 of the Notice has been corrected, consistent with paragraph 4.3 of the settlement agreement, to reflect a single payment of the Gross Settlement Amount, as opposed to a two-part funding plan.
- **Disbursement:** Within 14 calendar days after Defendant funds the Final Payment, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class & PAGA Counsel Fees Payment, the Class & PAGA Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class & PAGA Counsel Fees Payment, the Class & PAGA Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. (¶4.4)
- **Uncashed Settlement Checks:** The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. (¶4.4.1) For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (¶4.4.3)
- The settlement administrator will be CPT Group, Inc. (¶1.2)
- Notice of Final Judgment will be posted on the Settlement Administrator's website. (¶7.8.1)
- The proposed Settlement Agreement was submitted to the LWDA on June 4, 2024. (Howe Decl., Exhibit 2.)
- Participating class members and the named Plaintiff will release certain claims against Defendant. (See further discussion below)

ANALYSIS OF SETTLEMENT AGREEMENT

1. Does a presumption of fairness exist?

1. Was the settlement reached through arm's-length bargaining? On July 24, 2023, the parties mediated before David Phillips, which ultimately resulted in settlement following continued negotiations with the involvement of the mediator. The parties accepted the mediator's proposal on October 12, 2023. (Howe Decl. ¶6.)

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2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Class Counsel represents that as part of settlement negotiations, the parties engaged in an informal discovery exchange where Plaintiff's counsel and their expert reviewed and analyzed the following: (1) electronic time and pay data for nearly the entire putative class members and alleged aggrieved employees that Defendant had available; (2) the total number of current and former putative class members and aggrieved employees who worked during the relevant time periods; (3) the total number of workweeks at issue during the relevant time periods; (4) the total number of pay periods at issue during the relevant time periods; (5) the average hourly rate for the putative class members; and (6) other relevant information, including Defendant's Employee Handbook, Plaintiff's personnel file, wage statements, and time records. Plaintiff's counsel and their expert reviewed and analyzed the data produced by Defendant which included nearly all of the pay data for the putative class members and time punch data which spanned from November 17, 2018, through April 22, 2023. (*Id.* at ¶18.)

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (*Id.* at ¶135.)

4. What percentage of the class has objected? This cannot be determined until the fairness hearing. See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 14:139.18, ("Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing.").

CONCLUSION: The settlement is entitled to a presumption of fairness.

2. Is the settlement fair, adequate, and reasonable?

1. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) Here, Class Counsel has provided information, summarized below, regarding the estimated values of the class claims alleged:

Violation	Maximum Exposure
Unpaid Minimum Wages	\$417,630.40
Unpaid OT Wages	\$13,171.00
Meal Period Violations	\$1,941,064.00
Rest Period Violations	\$1,211,618.00
Wage Statement Violations	\$2,624,000.00
Waiting Time Penalties	\$1,171,668.00
PAGA Penalties	\$2,548,200.00
Total	\$9,927,351.40

(Howe Decl. ¶¶12-34.)

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2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (See *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 (“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”).)

4. Amount offered in settlement. Plaintiff’s counsel estimated Defendant’s maximum damages at \$9,927,351.40. Plaintiff’s counsel obtained a \$1,500,000 non-reversionary settlement. This is approximately 15.1% of Plaintiff’s estimated maximum recovery which, given the uncertain outcomes, is within the “ballpark” of reasonableness.

The settlement amount, after reduced by the requested deductions, leaves approximately \$850,362.25 to be divided among approximately 656 class members. Assuming full participation, the resulting payments will average approximately \$1,296.28 per class member.

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions.

7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement. The class members’ reactions will not be known until they receive notice and are afforded an opportunity to object, opt-out and/or submit claim forms. This factor becomes relevant during the fairness hearing.

CONCLUSION: The settlement can be preliminarily deemed “fair, adequate, and reasonable.”

3. Scope of the release

Release of Claims. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff and Class Members will release claims against all Released Parties as follows: (¶¶5)

- Release by Participating Class Members: Upon the Court entering the Final Approval Order/Judgment and Defendant funding the Final Payment, all Class Members who have not opted out will fully release and discharge Defendant, and all affiliated predecessor and successor entities, and each such entity’s respective present and former subsidiaries, affiliates, parents, agents, employees, members, investors, partners, owners, directors, officers, attorneys, trustees, insurers, representatives, predecessors,

successors and assigns (collectively referred to as the “Released Parties”), from any and all claims reasonably related to or arising out of the factual allegations pled in the operative pleading in the Lawsuit, including all claims made and that could have been made in such pleading reasonably related to or arising out of the factual allegations therein during the Class Period (collectively the “Released Claims”). The Released Claims include but are not limited to claims for any alleged or actual failures to timely, fully, properly, or completely pay any minimum wages, regular wages, overtime premium wages, meal or rest period premium wages, or other wages owed to the Settlement Class; any and all alleged or actual failures to comply with meal or rest period requirements; any alleged or actual failures to provide proper, accurate, timely, adequately descriptive, or complete wage statements or pay stubs; any and all alleged or actual failures to timely pay all wages, or compensation owed to a fired, quitting, or otherwise departing employee; any and all alleged or actual unfair business practices related to the foregoing; and any and all alleged or actual failures to pay any interest or penalties owed as a result of any and all of the foregoing. Plaintiff and Settlement Class Members will release Defendant and the Released Parties from all remedies that could be claimed in connection with the Released Claims including but not limited to, statutory, constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys’ fees, litigation costs, restitution, and equitable relief. All Class Members who have not opted and thereby release and discharge Released Parties will be deemed to have acknowledged and agreed that the Released Claims asserted in the Action are disputed and that California Labor Code § 206.5 is not applicable to their Individual Class Payment. (¶15.2)

- **Release by Aggrieved Employees:** All Aggrieved Employees will release and discharge Released Parties from all claims for civil penalties pursuant to PAGA that are reasonably related to or arising out of the factual allegations in the operative pleading in the Lawsuit and/or Plaintiff’s PAGA notice to the LWDA which occurred during the PAGA Period (collectively, the “Released PAGA Claims”). The Plaintiff and Class Members will release Defendant and the Released Parties from all remedies that could be claimed in connection with the Released PAGA Claims including but not limited to, statutory, constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys’ fees, litigation costs, restitution, and equitable relief. The Released PAGA Claims include but are not limited to claims for any alleged or actual failures to timely, fully, properly, or completely pay any minimum wages, regular wages, overtime premium wages, meal or rest period premium wages, or other wages owed to the Settlement Class; any and all alleged or actual failures to comply with meal or rest period requirements; any alleged or actual failures to provide proper, accurate, timely, adequately descriptive, or complete wage statements or pay stubs; any and all alleged or actual failures to pay all wages, or compensation owed to a fired, quitting, or otherwise departing employee; any and all alleged or actual unfair business practices; and any and all alleged or actual failures to pay any interest or penalties owed as a result of any and all of the foregoing. The release period for the PAGA claim shall be the same as the PAGA Period. All Aggrieved Employees, regardless of whether they have

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opted out of the Class Settlement as described above, and the State of California shall be bound by the PAGA Release and fully release and discharge Defendant and all Released Parties from all released PAGA claims upon the final approval of the settlement of PAGA Claims in this Action. The Parties agree there is no statutory right for any Aggrieved Employee to object, opt out or otherwise exclude himself or herself from the Settlement. Unless otherwise provided by law, the Parties further agree there is no right or opportunity for any Aggrieved Employee to appeal the approval of the PAGA settlement by the Court, this settlement shall not be subject to collateral attack by any Aggrieved Employee, and such prohibited collateral attack shall include, but not be limited to, claims that the Aggrieved Employee failed, for any reason, to timely receive his or her individual Settlement Payment. (§5.3)

- “PAGA Notice” means Plaintiff’s November 17, 2022, letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subdivision (a). (§1.33)
- Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment. (§7.5.4)
- “Released Parties” means: Pediatric and Family Medical Foundation and each of its past and present officers, directors, shareholders, board members, managers, employees, agents, principals, heirs, representatives, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys. (§1.41)
- Named Plaintiff will also provide a general release and CC § 1542 waiver. (§5.1)

4. May conditional class certification be granted?

1. Standards

A detailed analysis of the elements required for class certification is not required, but it is advisable to review each element when a class is being conditionally certified (*Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (*Dunk* at 1807, fn 19.) Finally, the Court is under no “ironclad requirement” to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied. (*Wershba* at 240.)

2. Analysis

a. Numerosity. There are approximately 656 class members. (MPA at 19:25-27.) This element is met.

b. Ascertainability. The proposed class is defined above. The class definition is “precise, objective and presently ascertainable.” (*Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919.) The class members are identifiable from Defendant’s records. (MPA at 20:8-9.)

c. Community of interest. “The community of interest requirement involves three factors: ‘(1) predominant common questions of law or fact; (2) class representatives with

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claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

As to commonality, Plaintiff contends that common questions of law and fact include, but are not limited to: 1) Whether Defendant failed to pay minimum and overtime wages; 2) Whether Defendant failed to provide the Class Members meal periods; 3) Whether Defendant failed to provide the Class Members rest periods; 4) Whether Defendant failed to pay timely wages to Class Members; 5) Whether Defendant failed to provide the Class Members complete and accurate wage statements; 6) Whether Class Members are entitled to waiting time penalties for Defendant’s failure to pay all wages upon separation of employment; and 7) Whether Defendant violated Business and Professions Code section 17200. (MPA at 20:24-21:5.)

As to typicality, Plaintiff asserts that she suffered the same alleged violations (e.g. failure to pay minimum and overtime wages, failure to pay meal and rest period premium wages for noncompliant meal or rest periods, failure to timely pay wages during employment, failure to provide complete and accurate wage statements, and failure to pay all wages due upon separation of employment) as the class as a whole did. (*Id.* at 27:4-20.)

As to adequacy, Plaintiff has filed a declaration asserting that she has no conflicts with the class and has participated in the litigation.

d. Adequacy of class counsel. As indicated above, Class Counsel has shown experience in class action litigation, including wage and hour class actions.

e. Superiority. Given the relatively small size of the individual claims, a class action appears to be superior to separate actions by the class members.

CONCLUSION: The class may be conditionally certified since the prerequisites of class certification have been satisfied.

5. Is the notice proper?

1. Content of class notice. The proposed notice is attached to the Settlement Agreement. Its content appears to be acceptable. It includes information such as: a summary of the litigation; the nature of the settlement; the terms of the settlement agreement; the proposed deductions from the gross settlement amount (attorney fees and costs, enhancement awards, and administration costs); the procedures and deadlines for participating in, opting out of, or objecting to, the settlement; the consequences of participating in, opting out of, or objecting to, the settlement; and the date, time, and place of the final approval hearing.

In the supplemental papers, the parties indicate that the Notice will be given not only in English but also in Spanish.

2. Method of class notice.

Not later than fourteen (14) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (¶4.2) Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail,

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the Class Notice. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database. (¶7.4.2)

Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time. (¶7.4.3)

The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice. (¶7.4.4)

Cost of class notice. Initially, settlement administration costs were estimated not to exceed **\$12,500**. In the supplemental papers, the parties indicated that the Notice will be given not only in English but also in Spanish. The parties advised that the cost of translating the Class Notice into Spanish will add an estimated \$1,200 to the Administrator's costs, bringing up the total estimate to \$16,637.75 – in excess of the limit provided for in the original Settlement Agreement (\$12,500). (Settlement ¶3.2.3.) In the most recently filed supplemental papers, the parties have revised the Settlement Agreement by increasing the cap on administration costs to \$16,637.75. (Settlement ¶3.2.3.) The Class Notice has also been revised to reflect the increase in the cap on administration costs to \$16,637.75. (Class Notice ¶3(2)(C).) Prior to the time of the final fairness hearing, the administrator must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

6. Attorney fees and costs

CRC rule 3.769(b) states: "Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action."

Ultimately, the award of attorney fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122, 1132-1136.) Despite any agreement by the parties to the contrary, "the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable." (*Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4th 123, 128.)

The question of whether Class Counsel is entitled to **\$500,000** (33 1/3%) in attorney fees will be addressed at the fairness hearing when class counsel brings a noticed motion for attorney fees. Class counsel must provide the court with billing information so that it can

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properly apply the lodestar method and must indicate what multiplier (if applicable) is being sought as to each counsel.

Class Counsel should also be prepared to justify the costs sought (capped at **\$14,000**) by detailing how they were incurred.

7. Incentive Award

The Settlement Agreement provides for an enhancement award of up to **\$9,000** to the named Plaintiff. In connection with the final fairness hearing, named Plaintiffs each must submit a declaration attesting to why he or she should be entitled to an enhancement award in the proposed amount. The named Plaintiff must explain why he or she “should be compensated for the expense or risk she has incurred in conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiff, is required in order for the trial court to conclude that an enhancement was ‘necessary to induce [the named plaintiff] to participate in the suit’” (*Id.* at 806-807, italics and ellipsis in original.) The Court will decide the issue of the enhancement awards at the time of final approval.

CONCLUSION

The Parties’ Motion for Preliminary Approval of Class Action Settlement is GRANTED as the settlement is fair, adequate, and reasonable.

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The Parties' Motion for Final Approval of Class Action Settlement must be filed by **July 29, 2025**. Plaintiff must call the Court PRIOR to filing and serving to obtain a hearing date and briefing schedule.

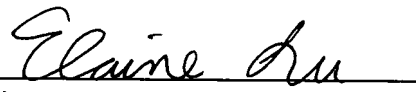
The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged single document that constitutes a [Proposed] Order and Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out.

Non-Appearance Case Review is set for **August 5, 2025**, 8:30 a.m., Department 9.

The Judicial Assistant is to give notice to Counsel for Plaintiff who is ordered to give further and formal notice to all parties.

IT IS SO ORDERED.

DATED: January 6, 2025


Elaine Lu
Judge of the Superior Court